

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THERESA MATHIS,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 01-CV-4352
COUNTY OF BUCKS, and	:	
CHARLES H. MARTIN,	:	
SANDRA A. MILLER, and MICHAEL	:	
FITZPATRICK, Bucks County	:	
Commissioners, and J. ALLEN NESBITT,	:	
Warden, Bucks County Correctional	:	
Facility and Director of Department of	:	
Corrections, and PETER J. DOYLE and	:	
JOHN ORESICK,	:	
Defendants.	:	

MEMORANDUM-ORDER

Green, S.J.

March _____, 2002

Presently before the Court is the Motion of Defendants County of Bucks, Charles H. Martin, Sandra A. Miller, Michael Fitzpatrick, J. Allen Nesbitt and John Oresick to Dismiss Count II of the Complaint against the County only and to Dismiss Count III of the Complaint against all moving Defendants pursuant to Fed.R.Civ.P. 12(b)(6), Plaintiff's Response, Defendants' Reply and Plaintiff's Sur-reply. For the following reasons, Defendants' motion will be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

According to the Complaint, Plaintiff Theresa Mathis, an inmate at the Bucks County Correctional Facility (the "BCCF"), alleged that Defendant Peter J. Doyle ("Doyle"), an employee at the BCCF, sexually assaulted her. (See Compl. at ¶¶ 14-18.) As a result of his alleged assault of Plaintiff, on or about May 29, 2001, Doyle was charged with Institutional

Sexual Assault, a third degree felony under Pennsylvania criminal law. (See Compl. at ¶ 21.)

Subsequently, Doyle resigned from his employment at the BCCF. (See Compl. at ¶ 21.)

Plaintiff brought suit against her alleged assailant, Doyle, as well as against the County of Bucks (the “County”), a municipal government entity, Charles H. Martin (“Martin”), Sandra A. Miller (“Miller”) and Michael Fitzpatrick (“Fitzpatrick”), Commissioners on the Bucks County Board of Commissioners, J. Allen Nesbitt (“Nesbitt”), the Warden at the BCCF and Director of the Department of Corrections and John Oresick, an employee of the Department of Corrections. Jurisdiction was premised on 28 U.S.C. § 1331.¹ In the Complaint, Plaintiff raised the following three claims: (1) violation of 42 U.S.C. § 1983 (Count I); (2) violation of the Equal Rights Amendment to the Pennsylvania Constitution (Count II); and (3) assault and battery under Pennsylvania criminal law (Count III).

Pursuant to Fed.R.Civ.P. 12(b)(6), the County, Martin, Miller, Fitzpatrick, Nesbitt and Oresick (collectively, “moving Defendants”) filed the instant Motion to Dismiss. Defendants claim that Counts II and III should be dismissed against the County because they are barred under the Pennsylvania Subdivision Tort Claims Act (“Tort Claims Act”) and that Count III should be dismissed against all other moving Defendants because Plaintiff has not alleged the elements of an assault and battery against Martin, Miller, Fitzpatrick, Nesbitt and Oresick.

II. LEGAL STANDARD

Pursuant to Fed.R.Civ.P. 12(b)(6), a court should dismiss a claim for failure to state a

¹Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over the state law claims alleged by Plaintiff in her Complaint against Defendants because those claims are “so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.”

cause of action only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Because granting such a motion results in a determination on the merits at an early stage of the plaintiff's case, the district court "must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988), *cert. denied*, 489 U.S. 106 (1989). "But a court need not credit a complaint's 'bald assertions' or 'legal conclusions' when deciding a motion to dismiss." See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) (citations omitted).

III. DISCUSSION

The issues presented in this case are identical to those issues presented in Berry v. County of Bucks, et al., Civil Action No. 01-3101. For the reasons stated in the memorandum filed in the aforesaid action, I will deny Defendants' Motion to Dismiss.

An appropriate order follows.

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Commissioners, and J. ALLEN NESBITT,	:	
Warden, Bucks County Correctional	:	
Facility and Director of Department of	:	
Corrections, and PETER J. DOYLE and	:	
JOHN ORESICK,	:	
Defendants.	:	

ORDER

AND NOW, this _____ day of March, 2002, upon consideration of Defendants' Motion to Dismiss Count II of the Complaint against Defendant County of Bucks and Count III of the Complaint against Defendant County of Bucks, Charles H, Martin, Sandra A. Miller, Michael Fitzpatrick, J. Allen Nesbitt and John Oresick, **IT IS HEREBY ORDERED** that Defendants' motion is **DENIED**.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.